Exh. CPC-21T
Witness: Charles P. Costanzo

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, **Complainant,** **v.** **PUGET SOUND PILOTS,** **Respondent.**	**Docket TP-220513**

REBUTTAL TESTIMONY OF

CHARLES P. COSTANZO

ON BEHALF OF PUGET SOUND PILOTS

MARCH 3, 2023

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I. IDENTIFICATION OF WITNESS

Q: Please state your name and position for the record.

A: My name is Charles P. Costanzo. I am the Executive Director of the Puget Sound Pilots.

II. PURPOSE OF TESTIMONY

Q: Please describe the areas of your rebuttal testimony.

A: My rebuttal testimony will address the following issues:

1. The standard that should inform the Commission's establishment of rates that funds the compulsory pilotage system serving Puget Sound.

2. A significant number of the foreign flag ships calling Puget Sound do in fact pose casualty and environmental risks that are mitigated by a comprehensive marine safety system that includes state and federal resources. Washington's Pilotage Act along with its comprehensive statutory and regulatory oil spill prevention and response scheme establishes an integrated and complementary system that places state pilots at as the first line of defense in identifying marine casualty risk from ships. The federal Port State Control program, while important, performs a substantially different function from mandatory state pilotage and cannot reasonably substitute for the marine safety benefits conferred by state pilotage.

3. Washington's diversity, equity and inclusion objectives require a nationally competitive level of pay and benefits for all members of the Puget Sound Pilots. If this standard is not achieved, PSP will likely not only fail to attract diverse pilot trainee candidates, but will also likely suffer a loss of current licensees similar to that experienced by the Great Lakes pilot groups prior to a reform of the pilot compensation and benefits system by the Coast Guard nearly 10 years ago.

4. A 1943 Washington Supreme Court decision forecloses all of PMSA's arguments against funding of the PSP pension. This legally required, known and measurable expense must be funded, and the Commission should approve a 15-year transition to a fully funded defined benefit plan.

5. PSP's settlement with stakeholders representing foreign flag yachts is reasonable and appropriate and results in fair, just and reasonable rates for this small, comparatively low risk category of vessel traffic on Puget Sound.

A. The Commission's Order 06 Recognizes a Standard That, Properly Applied, Is Consistent with the "Best Achievable Protection" Standard.

Q: In their testimony and other filings in this rate case, both PMSA and UTC Staff contend that the utility cost-of-service ratemaking model set out in paragraph 43 of Order 09 of the last general rate case governs the Commission's ratesetting in this general rate case. Do you agree with that position?

A: I agree to the extent that the Commission's ultimate goal is to set rates that are fair, just, reasonable, and sufficient as articulated in paragraph 43 of Order 09 and informed by Order 06 in this rate case, which makes clear that relevant environmental statutes must be considered. I do not agree with the fundamental characterization of the "shippers" as customers. While shippers are the primary ratepayers, pilots serve Washington citizens by protecting the marine environment from the risk of shipping and by ensuring the safe conduct of marine commerce. In this way, I believe that pilots carry out an important quasi-public function also serving a "public trust" customer, the Washington citizen. I also think it is vital that the UTC establish a level of sufficiency in its ratemaking that allows Puget Sound Pilots to attract the human capital necessary to provide consistently excellent pilotage services with a pilot corps that reflects Washington's rich and valuable demographic diversity.

PSP's position is that the Commission should adopt "best achievable protection" as the appropriate standard to guide the ratesetting process in a pilotage case. This standard is already established by statute, is well-understood by the agencies required to meet the standard, and is shared throughout Ecology and BPC rules and regulations designed to mitigate marine oil spill risk as part of the state zero spills policy. In light of the Commission's recent Order 06 in this case, PSP acknowledges that the statutory standard in RCW 81.116.020(3) requiring "fair, just,

reasonable, and sufficient" rates for pilotage services necessarily "involves an exercise of judgment in light of the specific facts of each case." Order 06 at ¶ 17. Further, as the Commission noted in Order 06, the ratesetting standard in a pilotage general rate case must be applied in light of other statutes "such as RCW 88.16.005, which emphasize the importance of pilotage and the protection of the natural environment." *Id.* at ¶ 21. Therefore, I believe that the ratemaking model, because it establishes the resources available to one of the state's primary marine environmental protection mechanisms – namely, pilotage – must be informed by Order 06 in this case and should incorporate the "best achievable protection" standard insofar as those rates are "fair, just, reasonable, and sufficient" in meeting "best achievable protection" goals.

Q: In your opinion, can the Commission's analysis in Order 06 be reconciled with PSP's position on "best achievable protection" or BAP?

A: Yes. If the Commission applies the "fair, just, reasonable, and sufficient" standard and gives appropriate weight to the statutory basis for compulsory pilotage in the prevention of oil spills and other maritime casualties, then objectives of the BAP standard would also be satisfied. That necessarily involves very different considerations from the cost-of-service model that is ordinarily applied to more traditional utilities within the Commission's jurisdiction. The Commission must consider the purposes of the compulsory pilotage system and further consider the limitations of the cost-of-service model as it applies to marine environmental protection.

PSP acknowledges and appreciates the statutory purpose of the compulsory pilotage system set out in RCW 88.16.005. The first paragraph of that statutory provision illustrates the point made in Order 06 as follows:

> The legislature finds and declares that it is the policy of the state of Washington to prevent the loss of human lives, loss of property and vessels, and to protect the marine environment of the state of Washington through the sound application of compulsory pilotage provisions in certain of the state waters.

From my perspective, Order 06 – and specifically the Commission's citation to RCW 88.16.005 – creates confidence that regardless of whether the Commission expressly adopts the "BAP" standard, it recognizes and will give due weight to the imperative of funding the pilotage system to the level that is required to ensure consistency with Washington's zero spills mandate. This includes, of course, setting pilot DNI at a level that is competitive to attract the best candidates to the BPC-administered training programs and, ultimately, to retain those individuals as Puget Sound Pilots.

Q: Can you provide an example of how the Commission's ratesetting considerations in a pilotage case as articulated in Order 06 must be distinguished from the cost-of-service methodology that the PMSA and UTC Staff advocate should apply?

A: Yes. With the cost-of-service model, competition between service providers in the same industry will help inform the Commission in evaluating reasonable costs and rates of return. In a pilotage case, however, where the overriding policy objective is safety, the Commission must approve a tariff that funds a pilot group's efforts to maximize safety and prevent oil spills, which necessarily involves funding the pilot group's efforts to deploy best practices that evolve with advances in science and technology. For PSP, examples of these best practices that necessitate funding of upgraded portable pilot units at a cost of $29,000 per unit plus some $437,000 in training costs annually to fund simulator training needed by pilots to develop and then implement new tug escort regulations that will involve tethering of tugboats to ships being piloted under

certain conditions as well as manned model training for one week every five years at one of a select group of training centers throughout the world. Experience has shown that changing the manned model training venue from one five-year cycle to the next increases the quality of the training experience and the beneficial impacts on piloting skill. While this training is expensive, PSP's practices in terms of the types and frequency of training are consistent with the best practices of other major pilot groups throughout the world.

Of course, the need to "attract necessary capital on reasonable terms" involves different considerations in the context of pilotage than with traditional utility ratemaking under the cost-of-service model. As the Commission notes in paragraph 43 of Order 09, PSP's ability to attract capital refers to its "ability to attract and retain pilots to perform essential pilotage service in the Puget Sound pilotage district." But what terms are "reasonable" and what capital investment is sufficient to position PSP to "perform essential pilotage service" to the level required by Washington's zero spill policy must necessarily be informed by the unique aspects of pilotage and the statutory and regulatory standards that apply to it.

This is where the BAP standard and the Commission's language in Order 06 intersect. Order 06 correctly observes that "[t[he prudency of any costs would be appropriately considered in light of all of the facts and the applicable law, *which would include any environmental protection statutes relevant to pilotage*." (emphasis added). The relevant environmental statutes, in turn, require BAP, defined as follows:

> "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those *staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable*.

RCW 88.46.010 (emphasis added; incorporated in the Pilotage Act at RCW 88.16.250(3)(a)).

Read together, Order 06 and RCW 88.46.010 are consistent: both require funding the pilotage program at a level that is necessary and appropriate to carry out Washington's zero spill policy. This includes the funding of training, equipment, and of course, the establishment of a target DNI and benefits at a nationally competitive level that is sufficient to "attract necessary capital on reasonable terms."

B. The Shipping Industry's Widely Known and Well-Documented Unscrupulous Practices Present Significant Risks to Puget Sound.

Q: Have you reviewed the testimony of PMSA witnesses Captain Michael Moore and Kathy Metcalf submitted in opposition to PSP's rate case?

A: Yes, I have.

Q: Both Captain Moore and Ms. Metcalf object to your prior testimony in this rate case regarding unscrupulous practices associated with foreign flagged shipping interests. Ms. Metcalf accuses you of making "false claims," and Captain Moore describes your testimony on this topic as "uninformed as well as disrespectful" to the U.S. Coast Guard and maritime professionals generally. How do you respond to this criticism?

A: I strongly disagree with these witnesses' characterizations of my testimony, which is thorough, accurate, and supported by relevant data and leading academic literature. I stand fully behind my testimony. In particular, the findings and conclusions contained in Evading Corporate Responsibility that I discussed in my prior testimony are unequivocal and speak for themselves. Professor Vuillemey is meticulous in his analysis, and the evidence he marshals sets out an extraordinarily persuasive case that the global shipping industry has increasingly resorted to tactics such as the use of flags of convenience, single vessel shell entities, and last voyage flags

for the specific purpose of evading compliance with regulatory standards and externalizing tort liability. Notably, Evading Corporate Responsibility was published less than three years ago. The current literature, in other words, is squarely contrary to Ms. Metcalf's characterization of my testimony as "dated" and not representative of the "reality of today's shipping industry."

Indeed, casualty risks from shipping are not limited to foreign-flagged vessels and are happening in Puget Sound. I include the U.S. Coast Guard Captain of the Port Reports, delivered to the Puget Sound Harbor Safety Committee in January of 2023 and the preceding meeting in November 2022, that document recent marine casualties in Puget Sound. The highlighted portions of these documents demonstrate mechanical failures and corrective actions taken by Coast Guard personnel on vessels that are subject to state pilotage. The reports are attached as Exh. CPC-22. In several cases, the actions of the pilot were integral to the corrective action. These reports serve to demonstrate that Puget Sound is presently at risk from ships. Pilots also file Marine Safety Occurrence notification forms to the Board of Pilotage Commissioners and the U.S. Coast Guard whenever significant safety issues arise that do not arise to a level of a casualty or incident. A loss of propulsion or an improperly positioned crane are typical examples of why a pilot might file an MSO. Of the 28 MSOs filed by Puget Sound pilots in 2022, eleven related to equipment failures aboard the ship. Of the 27 vessels that had MSOs filed, a search of Lloyd's register shows that these 27 vessels had a total of 735 deficiencies among them. Of the 27 vessels, seventeen were foreign flagged and of those seventeen foreign-flag vessels, thirteen were organized under single-vessel shell corporations. These reports support the contention that the conditions outlined by Professor Vuillemey are prevalent and applicable to Puget Sound. The table of MSO Reports is Exh. CPC-23.

Q: Ms. Metcalf and Captain Moore accuse you of painting the international shipping industry with too broad a brush, arguing in Ms. Metcalf's words that "it is unreasonable to assume foreign flag vessels are less regulated or less committed to superior safety and environmental performance." How would you respond to this criticism?

A: As an initial matter, I have never said that all foreign shippers engage in unscrupulous practices to evade regulation and environmental liability. In fact, I was explicit in my prior testimony that "[i]t is important to be clear that not every shipping company or vessel engages in the practices I have discussed above."

That said, I absolutely disagree with Ms. Metcalf's statement that it is unreasonable to conclude (or "assume" as Ms. Metcalf puts it) that foreign flagged vessels as a group tend to be less regulated and higher risk than U.S. flagged vessels. Although the U.S. flag fleet presents its own challenges and I am grateful that most U.S. flagged cargo vessels transiting Puget Sound opt to take a Puget Sound pilot, the fact is that in 2022 just three flags of convenience – Panama, Liberia, and the Marshall Islands – accounted for more than 44% of the world's total cargo capacity. These and other common flags of convenience are routinely flown by vessels with no rational nexus to the flag-state except that these nations' open registries court ship owners with the benefits of regulatory avoidance, reduced operating costs, ownership concealment, and limited restrictions on labor and crewing.

Q: Have you reviewed the Shipping Industry Flag State Performance Table that is Exhibit KJM-03?

A: Yes.

Q: Ms. Metcalf asserts that, contrary to your testimony, this flag state performance table shows that "shipowners/operators approach flag registration of their vessels with a view to selecting those that have comprehensive laws and regulations to ensure their obligations are met under international treaties." How would you respond?

A: As an initial matter, the flag state performance table cited by Ms. Metcalf was developed by a shipping industry trade group. It does not appear to be the product of independent or disinterested analysis. Further, the table is highly misleading. For example, this industry-developed guide lists Panama as a high-quality registry without a single red flag demarking a potentially negative indicator. Yet Panama – the largest ship registry and most prominent flag of convenience in the world – is identified by the U.S. Coast Guard as a targeted flag administration and Panamanian flagged ships accounted for more Coast Guard PSC Safety Exams with Deficiencies in 2021 than any other registry in the world.

In 2020, Forbes published an expose on the Panamanian ship registry titled: Why Isn't Panama Paying Its Fair Share of 20% of All Global Shipping's Carbon Emissions? A link to the Forbes piece is available here: https://www.forbes.com/sites/nishandegnarain/2020/09/20/why-isnt-panama-paying-its-fair-share-of-20-of-all-global-shippings-carbon-emissions/?sh=136ccb012a44. Although the article focuses largely on the impact of global shipping emissions on climate change, it also includes a detailed discussion of the dangers caused by the flag of convenience system that is consistent with the weight of independent academic literature on this subject:

> These [flag of convenience] ship registration locations are less expensive, have lower inspection standards and are highly risky for the environment and human safety.

> To make matters worse, the ship registration jurisdictions do not even have the capabilities to inspect ships as they are legally required to do by the UN Agency that governs shipping (the London-based UN Agency called the International Maritime Organization or IMO). Instead, they outsource this role to organizations called 'class societies,' which have all sorts of perverse revenue incentives to conduct safe inspections. They earn more revenue from their consulting activities than their non-profit auditing activities which was their core role in the first place.

The article goes on to discuss the "shipping crisis among Panama-registered vessels," noting that Panamanian-flagged ships were implicated in three large shipping disasters over just a two-month span in 2020. These casualties include the MT New Diamond, which experienced an explosion in September 2020 that killed a crew member and risked spilling 2 million barrels of crude into the Indian Ocean; the September 2020 loss of the Gulf Livestock 1 that resulted in the tragic death of 40 crew members; and the July 2020 loss of the Wakashion that "rammed into Mauritius' 100,000 year old coral barrier reef in a network of highly protected national marine and coastal parks on 25 July, and spilled thousands of tons of toxic fuel that led to almost 50 whales and dolphins dying within days of the incident."

Many of Ms. Metcalf's supporting exhibits that purportedly demonstrate the strong operational and environmental performance of ships sailing under flags of convenience rely on the imprimatur of the International Shipping Organization (IMO) which itself was documented in the New York Times in June of 2021 here: https://www.nytimes.com/2021/06/03/world/europe/climate-change-un-international-maritime-organization.html, as an insider's club for commercial shipping interests to avoid environmental regulations:

> Internal documents, recordings and dozens of interviews reveal what has gone on for years behind closed doors: The [I.M.O.] has repeatedly delayed and watered down climate regulations, even as emissions from commercial

> shipping continue to rise, a trend that threatens to undermine the goals of the 2016 Paris climate accord.
>
> One reason for the lack of progress is that the I.M.O. is a regulatory body that is run in concert with the industry it regulates. Shipbuilders, oil companies, miners, chemical manufacturers and others with huge financial stakes in commercial shipping are among the delegates appointed by many member nations. They sometimes even speak on behalf of governments, knowing that public records are sparse, and that even when the organization allows journalists into its meetings, it typically prohibits them from quoting people by name.

In short, the industry table's characterization of Panama (and other well-known flags of convenience including Liberia and the Marshall Islands) as high-quality registries casts serious doubt on the report's credibility. More to the point, the notion advanced by PMSA and Ms. Metcalf that the foreign shipping industry is characterized by environmentally motivated actors that seek out flag states based on their commitment to staunch regulatory enforcement and oversight is directly contradicted by the overwhelming weight of evidence.

Q: Is there additional evidence that you believe would assist the Commission in evaluating the credibility of Ms. Metcalf and Captain Moore's claims that "[t]he term 'flags of convenience' used as a pejorative term simply does not reflect today's global maritime industry" or that today's foreign shipping industry demonstrates a "collective commitment to safety and protection of the marine environment?"

A: Yes. I would strongly encourage the Commission to review Pretending to be Liberian and Panamanian; Flags of Convenience and the Weakening of the Nation State on the High Seas by Carlos Felipe Llinás Negret, which was published in 2016 in the Journal of Maritime of Maritime Law and Commerce (hereinafter, "Pretending to be Liberian"). Mr. Negret is a Board Certified Specialist in Admiralty and Maritime Law. His article, a copy of which is attached to

my testimony as Exh. CPC-24, is thoroughly researched and speaks directly to several of the claims asserted by Ms. Metcalf and Captain Moore regarding the use of flags of convenience and efficacy of international law in curbing the industry's bad practices.

Regarding the use of flags of convenience, Pretending to be Liberian explains:

> By opting to re-flag in a new nation, a vessel owner becomes subject to the safety, labor and environmental codes of that nation. *Not surprisingly, those nations whose open registries have become the most popular also tend to be those who possess the most lax labor, safety, and environmental codes*. Therefore, a vessel owner can ostensibly forum shop to find the laws most favorable and advantageous to his or her company's operations. *Most shipowners wishing to cut costs or evade scrutiny register under foreign flags where fees, taxes, regulations and laws protecting seafarers are often minimal or nonexistent. These shipowners now represent three quarters of the world's fleet*.
>
> In the case of American-based shipowners, the open registry system provides huge advantages. First, these shipowners are currently exempt from U.S. federal income and branch profit taxes. Thus, even though cruise lines like Carnival and Royal Caribbean earn a substantial proportion of their profits by selling cruises to millions of American citizens, to embark on itineraries that begin and end on U.S. ports, they can avoid income taxes by registering as foreign corporations and sailing under foreign flags.
>
> . . .
>
> *Second, the open registry system gives American-based shipowners the ability to avoid strict U.S. federal labor laws, minimum wage law and many environmental and safety regulations*. Even if a cruise line is based in the United States (with ships home ported in the United States), it can be immune from lawsuits for violations of federal labor laws, such as the Labor Management Relations Act ("LMRA") and Title VII of the Civil Rights Act.

Pretending to be Liberian at 6-7 (emphasis added; footnotes omitted).

The bottom line is that the narrative advanced by PMSA and Ms. Metcalf that the problematic tactics used routinely by the shipping industry are a relic of the past is not consistent with the facts. Rather, the evidence is clear that: (1) the use of tactics such as single-ship entity structures and flags of convenience has increased dramatically; and (2) the clear reason for this

dangerous trend is the industry's desire to avoid stringent regulation and externalize environmental liability and other operational risk.

As Ms. Metcalf notes, risk management is not necessarily an illegal activity. And she may well be correct that "[t]he current structuring of shipping companies . . . is necessary for the parent corporation to meet its responsibilities to its owners/shareholders." But her argument misses the point, which is that the same tactics that manage shippers' risks and benefit shareholders too often do so at the expense of public safety and welfare by externalizing liabilities associated with their operations. Regardless of the legality of the tactics deployed by these massive international interests, the relevant issue in this proceeding is that the practical effect of shippers' "risk management" strategies is to shift the safety and environmental risk of their activities onto the public. Ms. Metcalf also claims that "[o]ne only needs to look at the costs associated with marine casualties to appreciate the impact of a casualty on a shipping company's bottom line." These costs also point to why shippers rely on the protection of the open registry system, the imprimatur of the IMO, and the use of strategic corporate structuring to shift their risk onto the public.

Q: Ms. Metcalf characterizes both you and the author of Evading Corporate Responsibilities, Professor Vuillemey, as "outside[rs]," and claims that "[l]ooking at the marine industry from the inside would allow a better understanding of the commitment of individuals that have worked both afloat and ashore, shipping companies and the international and national regulators that are committed to ensuring compliance with the laws and regulations." Ms. Metcalf goes on to personally vouch for her colleagues'

"dedicate[ion] to safety and environmentally responsible operations." How would you respond to this testimony.

A: While I cannot speak to Ms. Metcalf's personal assessment of her colleagues' intentions, I can say unequivocally that her anecdotal experience is contrary to the heavy weight of published data and academic literature on this subject.

I also find it interesting that Ms. Metcalf would encourage the Commission to dismiss the objective academic findings contained in Evading Corporate Responsibility (and many other independent sources) in favor of an "insider" perspective. Ms. Metcalf's organization, the Chamber of Shipping of America, is an industry group whose membership includes U.S.-based companies that own and operate foreign-flagged ships (*i.e.* companies that take advantage of and profit from the flag of convenience system). Likewise, Captain Moore is Vice President of PMSA, which is also a business association of foreign shipping interests that are engaged in the practices I have identified. These are biased witnesses with a clear interest in downplaying the serious problems that pervade their industry. In fact, many of the arguments advanced by PMSA's witnesses are straight from a well-worn industry playbook that is discussed and debunked in Pretending to be Liberian:

> Despite the aforementioned shortcomings, shipowners and their trade groups vigorously defend the long-standing use of open registries and flags of convenience.
>
> . . .
>
> CLIA's [Cruise Lines International Association] position is that greater business flexibility and lower costs do not necessarily compromise safety on foreign flag ships. . . . CLIA explains that in the competitive international shipping industry there are a number of factors that must be met for a valid registry. First, a flag state must be member of the International Maritime Organization ("IMO"), and therefore must have adopted all of the IMO's maritime safety Resolutions and Conventions. Second, a flag state should have

> an established maritime organization that is capable of enforcing all international and national regulations. Third, open registration countries always require annual safety inspections prior to the issuance of a passenger vessel certification, and utilize recognized classification societies to monitor that their vessels comply with all international and flag state standards.
>
> CLIA further points out that regardless of the flag the vessel flies, compliance with the International Convention for the Safety of Life at Sea ("SOLAS") standards and other internationally recognized conventions are monitored not just by the flag States, but also by the port States.

Pretending to be Liberian at 16-18.

CLIA's arguments are substantially the same as the arguments advanced by PMSA's witnesses in this rate case, and they are wrong for the same reasons:

> [T]he United States, as a port State, is involved in the regulation of non-U.S. flagged vessels that touch U.S. ports. Sporadic American enforcement of SOLAS through Coast Guard inspections, however, does not address: 1) the precarious working conditions of seafarers, 2) environmental disasters, such as dumping of toxic waste on international waters, and 3) the lack of transparency in the corporate structure of shipowners, that both the ITF and SIU view as a facilitator of transnational criminal activities.
>
> More importantly, sporadic United States Coast Guard inspections on foreign flag vessels do not compensate for the flag States' lax enforcement (and even non-enforcement) of international rules and regulations. For example, CLIA's so-called "cooperative effort between flag and port states" failed miserably in two of the most recent maritime disasters: the capsizing of the *Costa Concordia*, which killed 32 people, and the engine fire on the *Carnival Triumph*.

Id. at 18-19.

Q: Both Captain Moore and Ms. Metcalf accuse you of minimizing the significance of Port State Control in regulating foreign flag shippers. Captain Moore even goes as far as to characterize your testimony as "disrespectful" of the U.S. Coast Guard. How would you respond to those accusations?

A: First, Captain Moore's statement that my testimony is somehow disrespectful of the U.S. Coast Guard is ridiculous. For over ten years, I co-chaired the U.S. Coast Guard-American

Waterways Operators Regional Quality Steering Committee, the first federally-chartered safety partnership between the U.S. towing vessel industry and the Coast Guard. This Committee met twice a year and Captain Moore attended and participated in nearly every meeting. I have an abiding respect for all of the members of the U.S. Coast Guard, and I commend Captain Moore on his years of Coast Guard service. PSP works closely with the Coast Guard on safety issues on a very regular basis. My organization and I have nothing but the utmost respect for the U.S. Coast Guard and its commitment to safety. Nothing in my testimony regarding the unscrupulous practices that pervade the international shipping industry even remotely suggests otherwise.

There is also no question that Port State Control is a critical safety bulwark that provides a level of protection to U.S. waterways including Puget Sound. But let's be clear: The reason that Port State Control is necessary is precisely to combat the effects of the bad practices of foreign shippers that I discuss in my testimony. The fact that Port State Control provides some protection against the severe risks presented by unscrupulous shipping interests sailing under flags of convenience does not mean these problems do not exist or that they have been solved. One of the reasons PSC is vital is because many countries offering flags of convenience fail to appropriately exercise flag state control. As the IMO puts it, PSC inspections are intended to be a "backup to flag State implementation," and a "second line of defense" against substandard shipping.

Although Port State Control can no doubt be effective, it has significant limitations. Most notably, the percentage of foreign flag ships inspected annually is relatively small and in Puget Sound amounts to only about 14% of total traffic. PSC inspections occur at the dock while the vessel is not underway. The inspections themselves generally take about three to five hours to complete and the inspections seek to balance the Coast Guard marine safety mission against its commerce mission. Thus, per the IMO: "When a PSC Officer (PSCO) inspects a foreign ship,

any such inspection should be limited to verifying that there are on board valid certificates and other relevant documentation, unless there are 'clear grounds' for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the certificates." A copy of the USCG Port State Control checklist is attached to my testimony as Exh. CPC-25.

The bottom line is that Port State Control, while important, reviews the documentation of a ship at the dock. A state pilot, on the other hand, is the first to board a ship while it is underway, is onboard to verify the performance of onboard systems while the vessel is underway, generally has considerably more sailing experience than typical Coast Guard PSC inspectors, and can observe the performance and conduct of the vessel's crew. The Port State Control system serves a valuable purpose but it is certainly no substitute for an elite pilot corps at the forefront of marine casualty prevention in Puget Sound.

Q: Can foreign flag shipowners "game" the Port State Control system to reduce the risk of inspection?

A: Yes, and there is significant evidence that some shipowners do exactly that. This practice, known as "flag hopping," was described in a 2020 sanctions advisory published by The U.S. Department of State, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), and the U.S. Coast Guard:

> Bad actors may falsify the flag of their vessels to mask illicit trade. They may also repeatedly register with new flag states ("flag hopping") to avoid detection. We recommend that the private sector be aware of and report to competent authorities any instances of a vessel owner or manager who continues to use a country's flag after it has been removed from a registry (i.e., "deregistered"), occurrences of a ship claiming a country flag without proper

> authorization, or instances when a vessel has changed flags frequently in a short period of time in a suspicious manner consistent with flag hopping.

A Copy of this advisory is attached to my testimony as Exh. CPC-26.

In addition to facilitating international crime and sanctions evasion, flag-hopping (and the related practice of class society-hopping) is associated with the strategic evasion of Port State Control inspection. That is because PSC programs including the Coast Guard's target certain vessels for inspection in part based on flag state and a ship's classification society. By strategically reregistering, owners of high-risk vessels can reduce the likelihood of inspection. This topic is analyzed in depth in Do Port State Control Inspections Influence Flag- and Class-hopping Phenomena in Shipping?, which was published in 2011 in the Journal of Transportation Economics and Policy. A copy of this article is attached to my testimony as Exh. CPC-27. As the article explains:

> Our interpretation is that given the importance of PSC inspections, the result of their actions (detention and deficiencies detected) are nowadays considered by shipowners when deciding on the flag or on the classification society of their vessels. At first sight, this result could be seen as rather encouraging as it stresses the effectiveness of PSC, forcing shipowners to move from relatively bad to good flags or classes. *However, our findings merely suggest that PSC actions give rise to opportunistic behaviour among shipowners operating relatively bad vessels*.

Id. at 174 (emphasis added).

Q: Apart from flag-hopping and the dubious practices addressed in your prior testimony, are there any other well-known practices within the foreign flag shipping industry that are relevant to assessing the risks these vessels and their owners pose to Puget Sound?

A: Yes. The problem of vessel owners abandoning their ships following a major casualty is a highly disturbing trend with potentially massive implications for Puget Sound in the event of a major oil spill or other significant casualty involving a foreign flag ship.

Q: What is ship abandonment and why does it typically occur?

Ship abandonment is a well-documented and extremely problematic global trend. Ship abandonment occurs when, after a significant casualty, the ship owner simply walks away from the ship, its crew, and the associated liabilities. This disturbing practice is addressed in a 2020 article titled What Happens When Tycoons Abandon their Giant Cargo Ships, available here: https://ajot.com/news/what-happens-when-tycoons-abandon-their-giant-cargo-ships. As the article explains:

> For shipping company owners and executives, the decision to abandon a ship, cargo and crew often comes down to basic math. When the company owes more than the vessel and cargo are worth, it might make financial sense to walk away.

Q: Can you discuss an example of ship abandonment that led to significant liability evasion?

A: Yes, the abandonment of the bulk carrier M/V Adamastos in Brazil provides a fairly typical example. In 2014, port inspection of the M/V Adamastos in Sao Francisco, Brazil, identified more than 40 deficiencies. While detained in port, the M/V Adamastos broke free of her moorings and ran aground. In response, the owners promptly abandoned the ship and cancelled her insurance. Thereafter, the charterer obtained a multi-million-dollar award against the M/V Adamastos in a London arbitration. However, because the award was uncollectable against the abandoned and dilapidated M/V Adamastos and the single-vessel entity that owned it,

the award creditor sought to collect against other ships managed by the same management company and with strong ties to the same beneficial owners.

In accordance with U.S. admiralty law, plaintiffs seized two ships – the M/V Vigorous and the M/V Fearless – then lying afloat in the District of Oregon and the Southern District of Texas, respectively. Plaintiffs asserted claims based on alter-ego and successor liability theories against the single-vessel subsidiary entities that owned the seized ships and their management company alleging that they were liable for damage arising from the abandonment of their sister ship, the M/V Adamastos. Both cases were summarily rejected by the courts.

In affirming U.S. District Judge Michael Mossman's order granting summary judgment in favor of defendants, the Ninth Circuit Court of Appeals explained that in the maritime context, veil piercing requires, among other things, that "the controlling corporate entity exercise[s] total domination of the subservient corporation, to the extent that the subservient corporation manifests no separate corporate interests of its own" and that it "had a fraudulent intent or an intent to circumvent statutory or contractual obligations." *Pac. Gulf Shipping Co. v. Vigorous Shipping & Trading S.A.*, 992 F.3d 893, 898 (9th Cir. 2021).

In practice, this highly exacting standard is nearly impossible to meet. In fact, despite admittedly overlapping interests among the entities, plaintiffs were unable to survive summary judgment:

> Pacific Gulf tries to bolster its argument by pointing to overlaps among the businesses. Of course, it is undisputed that the operations of Blue Wall, Vigorous, and Adamastos all involve the Gourdomichalis brothers. Nor is it disputed that Adamastos, Phoenix, and Vigorous all shared the same office or that Blue Wall and Phoenix had the same contact information. But these facts, absent any evidence suggesting wrongdoing, do not reasonably justify a finding of alter-ego.

Id. at 900. In the end, the plaintiffs were left "empty handed," as the M/V Adamastos' beneficial owners successfully utilized the single-vessel-entity corporate structure that is standard practice in the shipping industry to avoid liability and externalize the damage caused by their operation and abandonment of the M/V Adamastos. *Id.* A similar or worse incident on Puget Sound, particularly one involving a major oil spill, would be catastrophic to the State of Washington and its citizens.

Q: Washington and federal law each require shipowners to demonstrate financial responsibility in order to operate in state waters. Why are these statutory requirements insufficient to ensure that damage caused by a foreign flag ship is paid by the responsible shipowner and not externalized to Washington and its citizens?

A: As an initial matter, the Washington Department of Ecology has estimated that a major oil spill on Puget Sound could cost more than $10.6 billion. This far exceeds the maximum financial responsibility thresholds under both Washington and federal law. In this respect, state and federal financial responsibility requirements, even when they work properly and as intended, are inherently insufficient to fully protect Washington's waterways and natural resources.

At the federal level, ships are required to demonstrate financial responsibility up to the maximum extent of their liability limit under the Oil Pollution Act of 1990 (commonly called "OPA 90") that was enacted by Congress in response to the Exxon Valdez disaster. This is typically accomplished by the shipowner obtaining a Certificate of Financial Responsibility or "COFR" that is essentially a bond issued by a qualified guarantor. An example of a COFR is attached to my testimony as Exh. CPC-28.

The major weakness in OPA 90's financial responsibility requirements is that the required amounts are quite modest relative to the risks presented. For example, the COFR

required in 2022 for a non-single hull tank vessel is a maximum of $2,300 per gross ton. For a 65,000-ton tank vessel (a large ship that can only be piloted by a level 5 pilot), that amounts to total financial responsibility of about $150 million. Although this may seem like a large sum, it is a small fraction of the likely costs arising from an oil spill of any significant size on Puget Sound.

Washington's financial responsibility thresholds are much higher. For example, the Washington financial responsibility requirement for the hypothetical 65,000-ton tanker discussed above is $1 billion – more than six times the federal requirement. However, Washington's financial responsibility statute, RCW 88.40.020, suffers from a critical defect that could prove devastating in the event of a major casualty. Specifically, RCW 88.40.020(2)(c) and (3)(b) provide that a vessel owner or operator who "is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter." In the event that an at fault shipowner abandons its vessel following a major casualty or oil spill on Puget Sound, this loophole would render Washington's financial responsibility requirement essentially meaningless.

Q: Why is the exception for P&I club members from the requirement that shipowners and operators demonstrate financial responsibility so problematic?

A: Unlike OPA 90, which requires shipowners to demonstrate financial responsibility through a COFR or other satisfactory form of guarantee, Washington law creates an exception for P&I club members, which as a practical matter includes virtually all of the world's shipowners. Presumably, the legislature created this exception on the assumption that in the

event of a casualty, the P&I club would assume responsibility to pay damages to injured parties in the same manner as a liability insurer. Unfortunately, that is not necessarily the case.

Unlike traditional liability insurance, typical P&I policies provide only indemnity coverage. This significant difference in the nature of coverage was discussed by the U.S. Court of Appeals for the Eleventh Circuit in *Weeks v. Beryl Shipping, Inc.*, 845 F.2d 304 (11th Cir. 1988). As the *Weeks* court explained, under a traditional liability policy, the insurer is liable for "damages for bodily injury or property damage for which any covered person *becomes legally liable*, up to the applicable policy limits." *Id.* at 306 (emphasis added; citation omitted). In contrast, under an indemnity policy, an insurer is liable only for the "loss actually paid" to the injured party by the insured. *Id.* In other words, "actual payment by the insured is a condition precedent to any obligation on the part of the insurer." *Id.*

The implications of the difference between P&I and traditional liability coverage in conjunction with the loophole in Washington's financial responsibility law for P&I club members are clear: If a shipowner abandons its vessel after a major casualty and fails to pay claims, the P&I policy will not provide relief. In this circumstance, recovery from the shipowner will be limited to the amount of the federal COFR, and the greater amount of financial responsibility ostensibly required under Washington law will be a nullity.

Q: Please provide an example of how the situation you describe might unfold in practice?

A: Consider the following hypothetical: A large vessel sailing under a flag of convenience and held in a single-vessel shell entity with no other assets spills millions of gallons of oil into Puget Sound, causing $2.5 billion in cleanup costs and other damages (an amount roughly

equivalent to the cleanup costs incurred in the M/V Prestige disaster that occurred in 2002 off the coast of Spain). Under the incredibly high bar imposed by U.S. veil piercing law articulated in the *Vigorous Shipping* case, recovery would no doubt be limited to the ship itself and its sureties. With the ship likely worthless, liability vastly exceeding the value of the ship's brass-plate holding company, and no serious risk that the corporate veil will be pierced to reach the shipowner's other assets, the shipowner has a powerful incentive to simply abandon the vessel and walk away from its liabilities.

In this circumstance, the P&I Club will almost certainly deny coverage because, as the Eleventh Circuit explained in *Weeks*, "actual payment by the insured is a condition precedent to any obligation on the part of the insurer." Although the amount of the federal COFR will be recoverable, the delta between the federal requirement and Washington's higher threshold (which may be as much as several hundred million dollars) will very likely be lost.

Q: Do you know what led to this gaping loophole in Washington's financial responsibility law?

A: I do not. However, I cannot imagine that the Washington legislature understood the significance of this little-known distinction between P&I coverage and traditional liability insurance when it passed RCW 88.40.020.

C. <u>Washington's DEI Objectives Necessitate a Nationally Competitive Level of Pay and Benefits for PSP Pilots</u>.

Q: Please describe your understanding of Washington's DEI objectives as carried out by State Executive Agencies such as the Utilities and Transportation Commission?

A: In April of 2020, Governor Inslee signed into law ESHB 1783 that established a state Office of Equity to: (1) promote access to equitable opportunities and resources that reduce disparities and improve outcomes statewide across state government consistent with RCW 43.06D.020; (2) support executive branch state agencies and executive branch boards and commissions ("state agencies") commitment to be an anti-racist government system; (3) partner with state employees and communities to develop the state's comprehensive equity strategic plan and outcome measures designed to bridge opportunity gaps and reduce disparities; and (4) publish and report the effectiveness of agency programs on reducing disparities using input from the communities served by those programs. In March of 2022, the Office of Equity in coordination with the Governor's office promulgated the five-year Washington State Pro-Equity Anti-Racism (PEAR) Plan & Playbook ("PEAR Plan & Playbook"), Washington's approach for achieving pro-equity and social justice across state government. Under this PEAR Plan & Playbook, Executive Agencies are charged with establishing systems that foster equitable access to opportunities and resources that reduce disparities and improve equitable outcomes statewide. Those government actions inform my understanding of Washington agencies' clear obligations to achieve equity and social justice.

Q: How do these obligations inform the UTC's approach to pilotage ratesetting?

A: PMSA accurately characterizes Washington's maritime industry generally, and marine pilotage in particular, as "overwhelmingly white and male." PSP agrees with this characterization but strongly disagrees with PMSA's characterization of how the UTC should approach this challenge with regards to the pilotage tariff. PSP members are duly authorized by the state to engage in pilotage – a service that protects the public and ports from risks associated

with shipping. The UTC and the BPC share jurisdiction over different stewardship aspects of this vital public service and together are fulfilling a public trust obligation to meet marine protection goals as well as goals outlined in ESHB 1783 and the PEAR Plan & Playbook.

PSP has provided compelling evidence that there is a national competitive field of qualified pilot applicants who are evaluating many aspects of the professional environment of different pilotage districts, including compensation and benefits in those districts. PSP has also provided compelling evidence that its compensation and benefits are not currently competitive with the other pilotage districts that it competes with for pilot applicants. It is reasonable to conclude that increasing the competitiveness of compensation and benefits (among other important DEI efforts) will attract a greater number of applicants and will make Puget Sound a more attractive district for the small number of qualified candidates that will diversify the Puget Sound pilot corps. Therefore, the UTC has an obligation to provide "sufficient" compensation in this case to establish a DNI that brings PSP into competitive alignment with other similar pilotage districts around the country.

Q: What is your response to PMSA witness Ms. Nalty's claim that "[m]erely increasing compensation without addressing the other factors that jobseekers and, especially, diverse jobseekers are looking for, would seem to be only minimally impactful as a strategy."?

A: I agree, and I would add that Puget Sound Pilots is deeply engaged in much of the work described by Ms. Nalty as "other factors." PSP's interest in competitive compensation and benefits is just a part – albeit a highly significant one – of our overall strategy. I provide an annual review of our outreach work from 2022 as an example of the efforts our organization makes to reduce access disparities among marginalized groups and to increase equity in maritime

professions at Exh. CPC-29. PSP recognizes that DEI work goes much deeper than just increasing compensation and we also recognize that we are measuring our impact over varying time horizons and against multiple goals. However, in the short term, there is an alarming paucity of potential qualified marine pilots from traditionally underrepresented communities, and it is vital in order to compete with other pilotage grounds for those individuals that PSP has a competitive benefits and compensation that are sufficient to attract those prospective pilots to our district. I would also add that Ms. Nalty has no experience in the maritime field and may not appreciate both the current scarcity of qualified mariners and the degree to which competitive compensation influences the small number of mariners who are qualified to become pilots.

Q: What is your response to PMSA witness Captain Moore's contention that "When the industry makes investments in improving the industry's diversity, equity, and inclusiveness, the money must go into durable and public program administration, not into additional pilot revenues or a private program at PSP. As such, we would prefer to invest these funds in a DEI initiative administered by the BPC."?

A: I believe Captain Moore's statement is shortsighted and neglects the respective organizational strengths that both PSP and the BPC add to solving DEI challenges. Both organizations have a role to play but it is inaccurate to suggest that PSP's initiatives are not durable or that exclusively public program administration is sufficient. In addition to establishing nationally competitive compensation, the tariff should also fund the important outreach, mentorship, and training that PSP has identified and that Ms. Nalty has acknowledged are integral to a successful DEI program. PSP and the BPC work in close coordination on DEI initiatives but the challenges to each organization and the opportunities for each organization to

influence change are very different. Therefore, PSP believes that Captian Moore's more limited suggestion would lead to more limited results, and that his view of this issue fundamentally fails to appreciate the need for a systemic solution to an entrenched systemic problem.

D. Washington Supreme Court Precedent Clearly Mandates Approval of Full Funding for PSP's Existing Pension Plan and Its Transition to Full Funding.

Q: In developing rebuttal testimony responsive to PMSA's extreme anti-pension positions, did PSP discover a Washington Supreme Court case that is directly on point in its rejection of the PMSA positions?

A: Yes. In 1943, the Washington Supreme Court, in *State ex rel. Pacific Telephone & Telegraph Co. v. Department of Public Service*, 19 Wash.2d 200 (1943), considered and rejected identical arguments to those of the PMSA against tariff funding for the pension plan of the Pacific Telephone & Telegraph Co. made by the Washington Department of Public Service, the UTC's predecessor, and the Telephone Users League of Washington, Inc. representing the utility's customers. In a 36-page opinion, the Washington Supreme Court unanimously affirmed the order of the Thurston County Superior Court reversing the decision of the Department of Public Service disallowing as operating expenses payments made "to the trustee under respondent's pension plan to provide for the cost of pensions."

Q: Are there parallels between the *Pacific Telephone* case and the pension issues in this rate case?

A: Yes. There are two. First, regardless of how many different pension options have developed over a period of decades, PSP's original decision to adopt and then maintain a defined benefit pension plan similar to those of other pilot groups in the United States must be respected

and funded in the tariff. Second, the fact that present ratepayers will pay for the benefits of retired pilots no longer providing pilotage service or to make up the deficiency in an unfunded or underfunded pension plan is no basis for disallowing that expense.

Q: Please explain the first parallel more fully.

A: Remarkably, the utility's pension plan at issue in the *Pacific Telephone* case originated as a pay-as-you-go pension plan like that of PSP that was later converted to a funded defined benefit plan as now proposed by PSP based upon the strong direction from the Commission in Order 09. The following language from the Washington Supreme Court regarding the legitimacy of this type of pension expense speaks for itself:

> As courts have often stated, the officers responsible for the conduct of a business exercise a broad discretion in directing and controlling the operations thereof. In the absence of any showing that such officers have abused their discretion or acted arbitrarily, illegally, or beyond their lawful authority, courts will seldom interfere in the financial arrangements or methods of management of a business. (citations omitted)
>
> We are not impressed by appellant's argument that respondent's pension system constitutes an unfair method of control over its employees. It seems clear that respondent established the system for the purpose of creating and maintaining efficiency and attention to duty among its employees, as well as for the purpose of attracting able and intelligent men and women to its employment. The record contains no evidence tending to show that respondent has ever acted in bad faith in administering its pension plan, and certainly nothing that respondent could do would have a greater tendency to bring about indifference and bad feeling among its employees that manifestation of an intention to unfairly administer its pension system, or to use the same as a coercive weapon to force its employees to adhere to obnoxious or unwelcome methods to be followed in the course of their employment.

Q: Is there any question that PSP's pension is a legal obligation of the pilot group owed both to its retirees and to all current members of the pilot corps?

A: Absolutely not. The PSP pension plan, which is entirely in writing, is clearly a legal obligation of the organization as noted by pension attorney Bruce McNeil in his testimony. Further, this legal obligation of PSP is referenced specifically in both statute by the Washington Legislature and in regulation by the Washington Board of Pilotage Commissioners. RCW 88.16.035(1), 88.16.055(1)(f); WAC 363-116-315.

Q: Please explain more fully the second parallel between the *Pacific Telephone* case and the PSP pension issue in this case.

A: In Captain Moore's testimony, the PMSA "adamantly" opposes tariff funding for PSP's long-standing pension program on the grounds that shifting "all past, present and future retirement expenses to customers in a new surcharge is unfair, unjust, and unreasonable." These very same arguments were considered and rejected by the Washington Supreme Court as in *Pacific Telephone* follows:

> In the case at bar, it appears that when respondent first set up its pension system, it was operated on a 'pay-as-you-go' plan, and that in 1928, the company changed this system, adopting an accrual plan of payment based upon actuarial tables and studies. Appellant argues that under this system, a charge was imposed upon present rate payers to make up a deficiency in the pension fund which existed prior to 1928, and that the change in plan violated the principle that post losses cannot be recovered from present or future rate payers. Appellant suggests that under the present system, the rate payers are contributing to the existing unfunded actuarial reserve, because many of respondent's employees were so employed prior to 1928, and for the basis of computing their retirement pay, that service is considered.
>
> Difficulties are always experienced, whether by governmental agencies or private businesses, in setting up new spheres of operation of established governmental agencies or private businesses. If a change is to be made, a new system must have a beginning, and if a system is to be terminated, it must have an end. Save in so far as basic legal principles or definite rights of individuals or groups are violated, the law does not arbitrarily forbid change, nor does it control the future by establishing the past or the present as an immutable mold from which patterns must be taken for future years. *State ex rel. Oregon R. & N. Co. v. Railroad Commission,* 52 Wash. 17, 100 P. 179.

Q: Based on your observations of the pension-related stakeholder process organized by PSP throughout the first half of 2022 and now the unsuccessful mediation process in late 2022 and early 2023, was there any serious potential for a mediated settlement agreement on the pension issue between PSP and the PMSA?

A: Clearly no. PSP made extensive materials available to all parties throughout the stakeholder workshop process and made it clear that, given its legal obligations to retirees and all working pilots, there was very little negotiating space on the pension. And remarkably, the PMSA never made any sort of proposal. With hindsight, it was very unrealistic for the UTC to expect that there was any serious potential to achieve a mediated settlement on an issue where the parties have been so far apart for so long. PSP cannot abandon its legal obligations and PMSA has been trying to eliminate tariff funding for PSP's pay-as-you-go pension plan since 2006.

Q: Did the mediation process make any progress?

A: Given the confidentiality restrictions surrounding any mediation process, I can only say that the process was unsuccessful.

Q: What is PSP's position regarding the appropriateness of the UTC continuing to approve funding of the pension for former Executive Director and General Counsel Walt Tabler?

A: PSP's decision to approve a modest pension for a long time top executive was reasonable at the time and therefore must be funded in the rates consistent with the Washington Supreme Court's decision in the *Pacific Telephone* case discussed above.

E. PSP's Rate Settlement with Pacific Yacht Management and Northwest Marine Trade Association Is Reasonable and Appropriate to the Size and Risk Profile of Foreign Yachts.

Q: Do you agree with PMSA witness Captain Moore's testimony that the proposed decreased rates for yachts is based on a false premise and should be denied in principle.

A: I disagree with that assertion. There was nothing false about the premise by which PSP, PYM, and NMTA engaged in transparent good-faith negotiations resulting in a justifiable decrease in pilotage rates for yachts. I also disagree that the decrease should be denied in principle. PMSA's apparent dissatisfaction notwithstanding, there are sound and defensible reasons for the proposed decrease in rates.

Q: What reasons are those?

A: The primary reason is the comparatively lower risk associated with piloting yachts. Yachts are smaller, more maneuverable, and present much lower risk of a significant marine casualty or major oil spill than vessels that comprise PMSA's membership. Another reason is the comparatively low amount of workload and corresponding revenue presented by foreign yachts. Yachts represent a tiny fraction of PSP's workload and revenue. This factored heavily in fostering a collaborative negotiating environment to reach agreement with NMTA and PYM. Another reason is that the previous tariff more than doubled rates for yachts without a rational justification. Although Captain Moore cites testimony from Captain Stephan Moreno to support

his claim that PSP was aware of the dramatic rate increase for yachts, UTC staff nevertheless did not present a lower more justifiable alternative. PSP was surprised and the yachting community was disappointed to receive such a large rate increase. This is the basis of the oversight that Captain Moore claims was intentional. PSP's subsequent pension negotiations with PYM and NMTA allowed PSP to understand these concerns and advance an alternative proposal that would more appropriately align the tariff rates with the marine risk presented by yachts. Additionally, these negotiations allowed PSP to explain our legal obligations under our pension plan and persuade PYM and NMTA to support the pension proposal at issue.

Q: Can you describe the process that resulted in agreement with PYM and NMTA and that nonetheless reached an impasse with PMSA?

A: Yes. Early in 2022 when PSP began taking steps to comply with paragraph 192 of Rate Order 09, PSP held preliminary meetings with PMSA, and also held separate meetings with NMTA and PYM. PMSA was unwilling to acknowledge PSP's continuing legal pension obligations to pilots and essentially refused to negotiate a tariff structure that funded those legal pension obligations. PMSA repeatedly advanced various infeasible defined contribution plans that relieved PMSA members from any obligation to contribute to the tariff. During this time, PSP realized that continuing negotiation with PMSA would ultimately prove fruitless and that an agreement could be reached by PYM and NMTA that would equitably reduce the tariff for yachts on account of the comparatively low safety risk presented by those smaller, more maneuverable, and far less numerous vessels.

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CONCLUSION.

Q: Does this conclude your testimony?

A: Yes.

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